

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. §§ 6001 et seq.

Re: *Hannaford Brothers Co. and*
Southland Enterprises, Inc.

Land Use Permit Amendment
Application #4C0238-5-EB

Memorandum of Decision

This proceeding concerns an appeal to the Environmental Board ("Board") by Lisa Yankowski, David Wilber, Sheldon Katz, Wendy Copp and John Hodgson ("Appellants") from Land Use Permit #4C0238-5 ("Permit") issued by the District 4 Environmental Commission ("Commission") to Hannaford Brothers Company and Southland Enterprises, Inc. ("Permittees") and a cross-appeal by Permittees of certain Conditions imposed by the Commission in the Permit.

I. Background

A Procedural Summary of this case appears in the August 28, 2001 Prehearing Order and September 24, 2001 Scheduling Order.

II. Discussion

This Memorandum of Decision concerns the protocol to be followed at sound demonstrations to be conducted on January 23, 2002.

The Board invited the Appellants and the Permittees to jointly propose a protocol for the sound demonstrations, but they were unable to reach agreement and therefore each submitted their own proposals.

The Board deliberated on the parties' proposals on January 16, 2002. Because the Board was unable to reconcile the differing proposals, the Board has determined that it will be best to allow each party to present its own sound demonstration. Of course, should the parties be able to reach an agreement between this date and January 23, the Board will attend a joint demonstration.

III. Order

1. The Board will convene the hearing in this matter at the Hannaford parking lot off Shelburne Road in South Burlington, Vermont at 4:45 a.m. on the morning of

January 23, 2002. It will then travel to Queen City Park to hear the sound demonstrations offered by the parties.

2. The Appellants may present their sound demonstration to the Board from 5:00 a.m. to 6:00 a.m. on January 23.

3. The Permittees shall allow the Appellants full access to their property in order to allow the Appellants to present their sound demonstration.

4. The Permittees may present their sound demonstration to the Board from 6:00 a.m. to 7:00 a.m.

5. Based on the sound demonstrations, should the Board decide to issue a permit, the Board may condition such permit by imposing maximum noise levels. Accordingly, the Permittees should operate its equipment during their sound demonstration at the maximum levels that it would operate its equipment, should a permit be granted and the Lowe's store be in full operation.

6. The parties are responsible for providing whatever equipment they deem is necessary to present their sound demonstrations.

7. The parties are responsible for the strict adherence to the time limitations imposed by this Order.

8. Each party shall have unrestricted access to monitor the other party's sound demonstration by inspecting or installing noise-monitoring equipment at the noise generation and/or receptor sites.

9. The parties may request the Board to listen to their demonstrations at various sites in and around Queen City Park.

10. The Board will adjourn the sound demonstrations at 7:00 a.m. and reconvene the hearing in this matter at the South Burlington City Offices on Dorset Street at 8:00 a.m.

11. The Permittees shall present their sound expert for cross-examination and Board questions (and redirect examination and/or recross-examination, if necessary) from 8:00 a.m. to 9:00 a.m.

12. The Appellants shall present their sound expert for cross-examination and Board questions (and redirect examination and/or recross-examination, if necessary) from 9:00 a.m. to 10:00 a.m.

13. Pursuant the Prehearing Order, the Board will hear five-minute closing arguments from each party commencing at 10:00 a.m.

14. The Board will not call its own sound expert at this time but reserves the right to do so at a future date, if necessary.

Dated at Montpelier, Vermont this 17th day of January 2002.

ENVIRONMENTAL BOARD

*/s/Marcy Harding*_____
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